IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6589 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KRISHNA COMMUNICATION THR' PROPRIETOR - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL CORPN THR'MUNICIPAL COMMISSIONER & 2 - Respondent(s)

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Appearance :
MR KG SUKHWANI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.
MR SN SHELAT with MR HS MUNSHAW for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 09/04/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

What is challenged in this petition under Article 226 of the Constitution is the opening of the tenders by the

Ahmedabad Municipal Transport Service for appointment of advertising agent for sole agency in/on Diesel/CNG conventional BUSES owned and hired buses like conventional, CNG, Mini and Low Floor Diesel Buses for a period of three years from 01st April 2007 to 31st March 2010.

2. There is no serious dispute about the basic facts leading to filing of this petition. The Ahmedabad Municipal Transport Service invited tenders for the above contract and the tenders were to be opened on 05th March 2007. As per the tender notice (Annexure-C), the last date for receiving the tenders was 05th March 2007 not later than 03.00 p.m. As per the tender notice, the tenders were to be opened on 05th March 2007 at 03.00 p.m. In all, three parties submitted their tenders, namely, Krishna Communications (Outdoor) i.e. the present petitioner, M/s. Sambhav Media Ltd. i.e. respondent No.4 (the newly added party) and M/s. United Publicity, Ahmedabad. Just before the tenders were to be opened, the AMTS was served with a notice issued by the City Civil Court, Ahmedabad in Civil Suit No. 471 of 2007. The above suit was filed by one Mukesh Bhailal Patel, sole proprietor of Abhik Advertising Agency. The notice was issued on 05th March 2007 and made returnable on 06th March 2007. In view of the service of the said notice, the representatives of Krishna Communication (Outdoor), the petitioner herein, and United Publicity requested the authority to postpone opening of the tenders in view of the above legal proceedings. The representative of respondent No.4 – Sambhav Media Ltd. disagreed with the said parties and gave consent for opening the tenders. The representative of another party called Chitra Publicity who was present and though the said party had not

submitted any tender requested to postpone the opening of the tenders. The officers of the Ahmedabad Municipal Transport Service opened the tenders and prepared the comparative statement indicating the following rates offered by the parties.

Name of the parties	Rates (per bus per month)		
	First Year (2007-08)	Second Year (2008-09)	Third Year (2009-10)
M/s. Sambhav Media Limited – Respondent No.4	1851	1951	2051
Krishna Communication (Outdoor) - Petitioner	1621	1721	1821
United Publicity	1111	1211	1311

The said comparative statement is produced with the affidavit-in-reply at Page-91 of the paper book.

3. The present petitioner filed Civil Suit No. 489 of 2007 challenging the action of the AMTS in opening the tenders during pendency of Civil Suit No. 471 of 2004. The hearing of the notice of motion in the said suit was fixed on 13th March 2007, but the petitioner withdrew the said suit on 13th March 2007 after filing the present petition.

On 13th March 2007, the petitioner filed the present petition and this Court issued notice and made it returnable on 22nd March 2007 and ad-interim relief was granted restraining the AMTS from finalizing the awarding of contract. Reference was made in the petition to the above litigation and it was also stated that the petitioner shall withdraw the Civil Suit.

4. The affidavit-in-reply came to be filed by the Works Manager of AMTS on 21st March 2007 pointing out all the above facts and a photostat certified copy of the above-quoted comparative statement was also produced with the affidavit which was served on the learned advocate for the petitioner on 21st March 2007 itself. The petitioner filed a rejoinder on 29th March 2007.

5. At the hearing of the petition, Mr. Sukhwani, learned advocate for the petitioner has submitted that the AMTS acted arbitrarily in opening the tenders on 05th March 2007 even after receiving the notice from the City Civil Court. It is submitted that in view of the service of the said notice, out of three parties who had submitted the tenders, two parties requested for postponing the opening of the tenders and left the AMTS office premises and still the officers of the AMTS went ahead and opened the tenders in absence of the petitioner and another tenderer.

6. Mr. S.N. Shelat, learned counsel with Mr. Munshaw, learned advocate for the AMTS have submitted that when the City Civil Court had not issued any injunction and only notice was issued on the notice of motion, the AMTS committed no illegality or impropriety in opening the tenders and preparing the comparative statement. It is submitted that in deference to the City Civil Court, the authority did not take any decision, but certainly there was nothing wrong or improper in opening the tenders. It is also submitted that apart from the fact that the rates offered by respondent No.4 are the highest, the present petitioner was enjoying the

contract for the period upto 31st March 2007 and at a very low rate of Rs.400/- per bus per month as against the rate of Rs.1851/- offered by respondent No.4 for the first year and as against the rate of Rs.1621/- offered by the petitioner itself for the first year. It is, therefore, submitted that the present petition is an abuse of the process of the Court and the petitioner has resorted to this proceeding only for the purpose of enjoying the benefit of the contract expiring on 31st March 2007 at a very low rate and in order to prevent the highest bidder from obtaining the contract. It is submitted that on account of the ex-parte ad-interim injunction obtained by the present petitioner on 13th March 2007, the AMTS has been suffering loss of Rs.1621/- per bus per month i.e. approximately Rs.75,000/- per day from 01st April 2007 onwards.

7. Mr. Saurabh Amin for M/s. Nanavati Associates, learned advocate for respondent No.4 has also opposed the petition and supported the stand of the AMTS.

8. Having heard the learned counsel for the parties, it appears to the Court that when the City Civil Court had not granted any injunction or stay against the AMTS and the AMTS was to open the tenders on the date and time stipulated in the tender notice, no illegality, arbitrariness or even impropriety can be said to have been committed by the AMTS. Merely because out of three tenderers, two tenderers requested the AMTS not to open the tenders in view of the issuance of notice by the City Civil Court, AMTS was not obliged to stay its hands. On the contrary, opening the tenders on the date and time stipulated in the notice was

necessary to prevent any allegation being made in future. If the petitioner and another party (representative of M/s. United Publicity) preferred to leave the premises and did not remain present when the AMTS officers opened the tenders on the date and time stipulated in the tender notice, their conduct or absence cannot convert the legal and valid action of the AMTS authorities into illegal or improper action.

9. It is not the case of the petitioner that the rates attributed to the petitioner in the comparative statement are lower than the rates actually quoted by the petitioner and therefore, the petitioner cannot be permitted to make any grievance against opening of the tenders by the authorities on the date and time stipulated in the tender notice. There is no merit whatsoever in the petition and the same deserves to be dismissed summarily.

10. At this stage, Mr. Shelat with Mr. Munshaw, for the AMTS have submitted that the petitioner may be directed to pay costs to the authorities as they have suffered loss of Rs.75,000/- per day on account of ex-parte ad-interim injunction obtained by the petitioner.

11. It is true that ad-interim injunction was operating against the authorities resulting into some loss to the AMTS. But considering the fact that the petitioner had filed rejoinder on 29th March 2007 and on 29th March 2007, the hearing of the petition was adjourned to 03rd April 2007 without any request from the petitioner and thereafter also to 09th April 2007 i.e. till today without any request from the petitioner, and the ad-interim relief was continued till today, we are not

inclined to award any costs against the petitioner, more particularly when Mr. Sukhwani, learned advocate for the petitioner states that in view of the comparative statement of rates produced with the affidavit-in-reply, the petitioner does not wish to carry this matter any further.

12. The petition is accordingly dismissed. The ad-interim relief granted earlier stands vacated forthwith.

[M.S. SHAH, J.]

[H.B.ANTANI, J.]

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